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BEFORE THE UTAH AIR QUALITY BOARD

In Re: Approval Order – the Sevier Power Company 270 MW Coal-Fired Power Plant, Sevier County Project Code: N2529-001 DAQE-AN2529001-04	: : : : :	SECOND AMENDED REQUEST FOR AGENCY ACTION

SECOND AMENDED REQUEST FOR AGENCY ACTION

Pursuant to Utah Administrative Code R307-103-3(1) and Utah Code § 63-46b-3(3), the Utah Chapter of the Sierra Club ("Sierra Club") hereby files its Second Amended Request for Agency Action with Richard W. Sprott, Executive Secretary of the Utah Air Quality Board. The Sierra Club seeks review of the October 12, 2004 decision by the Utah Division of Air Quality and the Executive Secretary (collectively "UDAQ") to issue an Approval Order (AO) allowing the Sevier Power Company[1] to construct and operate a 270 MW coal-fired power plant in Sigurd, Sevier County, Utah (DAQE-AN2529001-04)(Project Code: N2529-001) and subsequent UDAQ decisions related to the AO. Pursuant to Utah Admin. Code R307-103-3(2), R307-103-6(2)(c), and R307-103-3, the Sierra Club relies on the Statement of Standing/Petition to Intervene previously submitted with its Request for Agency Action.

I. Permit Number and Date of Mailing

As mentioned above, Sierra Club is contesting the Approval Order signed by Richard W. Sprott, Executive Secretary of the Utah Air Quality Board, on October 12, 2004 to authorize the construction and operation of the Sevier Power Company 270 MW Coal-Fired Power Plant in Sigurd, Utah (DAQE-AN2529001-04)(Project Code: N2529-001). According to UDAQ, the date of mailing of the AO is October 12, 2004.

[1] According to UDAQ, NEVCO Energy Company, LLC, is the parent company of the Sevier Power Company.

II. Statement of Legal Authority and Jurisdiction

Sierra Club brings this Request for Agency Action pursuant to Utah Admin. Code R307-103-3(1), which states that "[i]nitial orders and notices of violation, as described in R307-103-2(1)[2], may be contested by filing a written Request for Agency Action to the Executive Secretary, Air Quality Board, Division of Air Quality . . . " R307-103-3(1). Utah Code 63-46b-3(3) specifies the content of this Request for Agency Action.

III. Statement of Facts and Reasons

A. Statement of Facts

On April 1, 2003, Sevier Power Company submitted a prevention of significant deterioration (PSD) permit application and its Notice of Intent (NOI) to construct a 270 megawatt (MW) coal-fired power plant near Sigurd, Utah. On September 10, 2003, Sevier Power Company submitted a revised PSD permit application and NOI.

The Sevier Power Company facility has the potential to emit 100 or more tons per year of carbon monoxide (CO), nitrogen oxides (NO_x), sulfur dioxide (SO_2), and particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (PM-10). Thus, the proposed coal-fired power plant is considered a new major source for those pollutants. The area in which the facility is to be located is currently designated as having attainment status for all pollutants. Therefore, the facility is required to meet the provisions of Utah's PSD regulation, Utah Admin. Code R307-405, in addition to other applicable provisions of the Utah Admin. Code, including the requirements of a Notice of Intent and Approval Order established by Utah Admin. Code R307-401.

The facility has the potential to emit at least 10 tons per year of one hazardous air pollutant (HAP), specifically hydrogen chloride (HCl). Therefore, the facility is considered to be a major source of HAPs and subject to Utah's provisions for case-by-case determination of maximum achievable control technology (MACT) limits for HAPs, pursuant to Utah Admin. Code R307-214-2.

Because the facility will be an electric utility steam generating unit capable of combusting more than 73 MW heat input of coal, the facility is subject to the New Source Performance Standards (NSPS) of 40 C.F.R. Part 60, Subpart Da, which Utah has incorporated by reference into state regulation at Utah Admin. Code R307-210-1.

Sierra Club has been involved throughout the permitting process for the proposed Sevier Power Company power plant. On October 17, 2003, Sierra Club submitted extensive comments on the proposed project in advance of the public comment period, detailing the permitting requirements pertaining to the permit application. The Sierra

[2] Utah Admin. Code R307-103-2(1) defines an initial order as, *inter alia*, "approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders." Utah Admin. Code R307-103-2(1)(a).

Club participated in a UDAQ public hearing held in Richfield, Utah on March 18, 2004. In addition, on April 9, 2004 and within the designated public comment period, Sierra Club submitted extensive comments on the UDAQ Intent to Approve the Sevier Power Company permit. Following the re-opening of the comment period, Sierra Club supplemented its April 9, 2004 comments with additional comments dated June 30, 2004 and July 16, 2004.

On October 12, 2004, Richard W. Sprott, Executive Secretary of the Utah Air Quality Board, signed an AO authorizing construction and operation of the proposed Sevier Power Company 270 MW circulating fluidized bed (CFB) coal-fired power plant. According to the Approval Order, the operation of the power plant would allow air emissions increases, in tons per year, of: 177.4 of PM-10; 1066.6 of NO_x; 233.9 of SO_2; 1278.6 of CO, and 53.4 of VOCs, and 24.7 of HAPs. With the AO, UDAQ released a memorandum titled "Response to Comments received on Sevier Power Company," authored by John D. Jenks, Environmental Engineer.

B. Statement of Reasons

As set forth below and in Sierra Club's comments, UDAQ's approval of Sevier Power Company PSD permit fails to comply with the Clean Air Act, the Utah Air Conservation Act, and the Utah Administrative Code. Sierra Club hereby incorporates and references its comments dated October 17, 2003, April 9, 2004, June 30, 2004, and July 16, 2004, and the documents submitted in support of those comments.

In addition, the Sierra Club sets forth the basis for its request for agency action below:

1. UDAQ Failed to Address Carbon Dioxide and Other Greenhouse Gas Emissions.

The Sevier Power Company estimates that the proposed power plant has the potential to emit 2.2 million tons of carbon dioxide (CO_2) and 1,640 tons of nitrous oxide (N_2O) each year. Both CO_2 and N_2O are greenhouse gases. N_2O has a global warming potential 296 times that of CO_2. N_2O is of significant concern because circulating fluidized bed boilers, such as the one being proposed by the Sevier Power Company, emit significantly more N_2O than conventional pulverized coal boilers.

UDAQ did not address these or other greenhouse emissions during the permitting process based on its belief that "UDAQ has no legal or regulatory authority to limit or control these emissions." Response to Comments at 29 (#83). However, UDAQ notes that "greenhouse gas emissions are potentially an area of concern." Id. Pursuant to the Clean Air Act and Utah Air Quality Act and its implementing rules, the State of Utah has the legal obligation to regulate greenhouse gases. Further, pursuant to the definition of "best available control technology" (BACT), Utah Admin. Code R307-101-2, Utah is required to consider other environmental impacts, such as greenhouse gas emissions, when determining BACT for a facility. Because UDAQ did not undertake this

consideration, the Sevier Power Company permit should be declared illegal, should be rescinded, and/or should be remanded to UDAQ to properly consider and regulate these pollutants in a PSD permit.

2. UDAQ Failed to Consider Adequately Integrated Gasification Combined Cycle in its BACT Determination for Sevier Power Company Facility.

Integrated Gasification Combined Cycle (IGCC) is a method of producing electricity by gasifying the coal, removing pollutants – including greenhouse gases – before combustion, and then burning the "clean" syngas in a modified combined cycle gas-fired power plant. IGCC is an available, demonstrated clean coal combustion technology with significant emission reduction benefits. As such, UDAQ is required to evaluate this technology comprehensively as part of its BACT analysis. To justify its failure to undertake this analysis, UDAQ suggests that "BACT is used as a control technology after selection of the process to be so controlled." Response to Comments at 30 (#84). UDAQ concludes that requiring the consideration of IGCC as part of the BACT analysis is "redefining the source." Id.

UDAQ's legal conclusion regarding the requirements of the BACT analysis is erroneous. Consideration of inherently lower emitting power production processes and techniques such as IGCC is required pursuant to Utah Admin. Code R307-101-2, which defines BACT. As the rule makes clear, consideration of the process design is a necessary part of the BACT analysis. Sevier Power Company did not consider IGCC in its BACT analysis for its proposed power plant, and UDAQ did not evaluate IGCC in its BACT review or determination. Therefore, the Sevier Power Company permit should be declared illegal, should be rescinded, and/or remanded to the agency for proper BACT analysis.

3. UDAQ Failed to Provide Adequate Justification for Not Requiring Sevier Power Company to Meet the Most Stringent NO_x BACT Limits Proposed or Required for Other CFB Boilers.

UDAQ determined that a NO_x emission limit of 0.10 lb/MMBtu, 24-hour rolling average, represents BACT for the proposed CFB boiler. However, NO_x BACT emissions limits for other power plants, including several proposed CFB boilers, are more stringent that the rate proposed for the power plant. Selective Catalytic Reduction (SCR) has been determined to be the Best Available Control Technology for NO_x for most recently permitted coal-fired power plants. Yet, UDAQ failed to provide a reasoned justification for not requiring or evaluating more stringent NO_x emission limits, or installation of SCR, in its BACT determination. Therefore, the Sevier Power Company AO should be declared illegal, should be rescinded, and/or remanded to the agency for proper BACT analysis.

4. UDAQ Failed to Consider Sufficiently Activated Carbon Injection for Control of Mercury Emissions from Sevier Power Company Plant in its MACT Determination.

UDAQ did not perform an adequate analysis of the case-by-case mercury MACT. UDAQ did not require consideration of activated carbon injection for control of mercury in its case-by-case MACT analysis. It appears that UDAQ did not consider activated carbon injection to be an available technology and thus did not evaluate this technology in its MACT analysis. However, as sworn testimony and supporting documents relied on or provided at an April 20, 2004 hearing on the Roundup Facility before the Montana Board of Environmental Review establishes, activated carbon injection is an available technology for mercury control from coal-fired power plants. Thus, UDAQ erroneously failed to consider carbon injection in the mercury MACT analysis and the Sevier Power Company AO should be declared illegal, should be rescinded, and/or should be remanded to the agency for proper MACT analysis.

5. UDAQ Failed to Require Continuous Opacity Monitoring to Measure Compliance with the Visible Emissions BACT Limit.

UDAQ required that visible emissions from any stationary point at proposed plant shall not exceed 10 percent opacity. Condition 12 of the AO and Response to Comments at 31 (#88). UDAQ specified that opacity observations shall be conducted according to 40 C.F.R. Part 60, Appendix A, Method 9, which is a manual method of measuring opacity requiring a certified opacity inspector to be present. No frequency for Method 9 observations is specified. Such infrequent monitoring is not sufficient to ensure continuous compliance with the opacity limit. UDAQ must require use of a continuous opacity monitoring system (COMS) to ensure continuous compliance with the visible emissions BACT limit as stated in 40 C.F.R. §§ 60.47a through 60.49a. Because UDAQ did not, the Sevier Power Company AO should be declared illegal, should be rescinded, and/or should be remanded to the agency to ensure continuous compliance with the visible emission limit.

6. UDAQ's Justification for Determining that the Proposed Plant Would Not Cause or Contribute to a Violation of the PM-10 National Ambient Air Quality Standards (NAAQS) is Flawed.

UDAQ concluded that "the proposed construction of the new power plant would not cause an exceedance of the NAAQS for PM-10; nor would it significantly contribute to any model predicted exceedances of the NAAQS in the Sevier Valley." Response to Comments at 6 (#13). However, there is no legal basis in Utah regulations or law for the finding that the proposed power plant would not contribute to a violation of the PM-10 NAAQS merely because it does not contribute "significantly" to the violations of the PM-10 NAAQS that were modeled by the Sevier Power Company. In other words, UDAQ cannot rely on a finding that the plant will not "significantly" contribute to NAAQS violations to suggest that the plant will not "contribute" to these violations. Because UDAQ's reasoning is flawed, the agency is prohibited from approving the

Sevier Power Company AO pursuant to Utah Admin. Code R307-401-6(2) and R307-405-6(2)(a)(i)(A).

Further, there is insufficient evidence in the record to support UDAQ's calculation of whether the proposed facility would cause or contribute to a violation of the PM-10 NAAQS. In particular, UDAQ failed to justify adequately the elimination of Western Clay Company of Aurora from the analysis, failed to consider the maximum, 24-hour average emissions from the two gypsum plants in the area, and failed to address sufficiently all fugitive sources of PM-10 emissions including dust from agricultural sources.

UDAQ also failed to recognize the existing modeled violations of the PM-10 NAAQS. Indeed, this information was not included in the ITA, the public notice, or in the UDAQ New Source Plan Review for the Sevier Power Company proposed power plant. Further, UDAQ has not stated any future plans to designate the area as nonattainment or to adopt a control strategy for the area to bring the area into attainment. Although one of the two gypsum plants in the valley has shut down, UDAQ did not revoke the gypsum plant permit to ensure that the plant could no longer contribute to unhealthy air quality. In fact, UDAQ admits the gypsum plant was only temporarily shut down, and that the plant could restart operations at any time under its existing AO. Response to Comments at 21 (#57).

Moreover, UDAQ failed to justify the use of the second highest PM-10 monitored value as representative of PM-10 background concentrations. UDAQ attempts to justify the elimination of the highest 24-hour concentration by suggesting that "[t]he combination of high winds and fire smoke on the highest monitored day suggested that the monitoring sample was a rare event, and not necessarily suitable for use in the analysis as a indicator of normal worst-case background levels for the area." Response to Comments at 20-21 (#55). Yet, "normal worst-case background levels" is a contradiction in terms. UDAQ's decision lacked sufficient analysis to show that the true cause of the highest monitored PM-10 value or to show that such occurrences are rare for the area.

In summary, UDAQ cannot support its decision to issue the AO in light of the results of air quality modeling that establish existing violations of the PM-10 NAAQS in the area. Nor can the agency defend its decision to equate a finding of non-significant contribution with a finding that the proposed facility does not contribute at all to PM-10 NAAQS violations. Further, UDAQ's determination of project's impact on PM-10 concentrations is not sufficiently supported in the record. Therefore, the Sevier Power Company AO should be declared illegal, should be rescinded, and/or should be remanded to the agency for compliance with the PM-10 NAAQS requirements.

7. UDAQ Failed to Require Sufficient Analysis of the Impacts of the Sevier Power Company Facility on Visibility, Soils, and Vegetation.

Pursuant to Utah Admin. Code R307-405-6(2)(a)(i)(D), UDAQ must require a PSD permit applicant to provide a full and complete analysis of "the impairment to

visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification." *See also* 40 C.F.R. § 52.21(o)(1) & (2). In response to comments raised about the necessity for such an analysis, UDAQ responded that: 1) the soil and vegetation analysis was conducted by Red Elk Consulting, Response to Comments at 7 (#17); 2) UDAQ reviewed this analysis and "feels it satisfies the requirement of this rule," Response to Comments at 17 (#43) and; 3) "there is no regulatory requirement under the PSD regulation for assessing visibility impacts in Class II areas such as Sevier Valley." Response to Comments at 28 (#80).

However, identifying a consultant does not ensure that a full and complete analysis of the impact to soils and vegetation has occurred. Moreover, the public should have some opportunity to review the soils and vegetation analysis to ensure compliance with the rule. And, Utah Admin Code R307-405-6(2)(a)(i)(D) explicitly requires the Sevier Power Company to provide an analysis of impairment to visibility in Class II areas, such as Sevier Valley. Accordingly, UDAQ has failed to demonstrate that a full and complete analysis of the impairment to visibility, soils, and vegetation was provided by the Sevier Power Company. Therefore, the relevant AO should be declared illegal, should be rescinded, and/or should be remanded to the agency for proper soils, vegetation, and Class II visibility analysis.

8. UDAQ Illegally Exempted the Proposed Facility from a Cumulative Class I Increment Analysis.

UDAQ did not require a cumulative Class I increment (also known as "maximum allowable increase") analysis from the Sevier Power Company. This decision was based on a policy that, if a source's impact on a Class I areas is less than a Class I "Significant Impact Level" (SIL), "there is no technical grounds for a cumulative effects analysis." Response to Comments at 33 (#95). UDAQ indicates that this approach has been adopted as a state policy and is endorsed by the EPA – Region VIII Modeler and the National Park Service Air Quality Modeler in Denver. Id. However, use of SILs is not authorized in any state or federal law or regulation. UDAQ also has never provided the public with any written policy regarding this approach to a cumulative Class I increment analysis. Indeed, such an approach directly contradicts Utah Admin. Code R307-405-6(2), which provides in pertinent part:

> Every new major source. . . must be reviewed by the Executive Secretary to determine the air quality impact of the source to include a determination whether the source will cause **or contribute to** a violation of the maximum allowable increases or the NAAQS in any area. The determination of air quality impact will be made as of the source's projected startup date. **Such determination shall take into account all allowable emissions of approved sources or modifications whether constructed or not, and, to the extent practicable, the cumulative effect on air quality of all sources and growth in the affected area.**

Emphasis added.

The Sevier Power Company attempted to comply with this regulation by submitting a cumulative Class I increment analysis in its September 10, 2003 PSD permit application and NOI, although the analysis was faulty and incomplete as discussed further below. However, UDAQ never presented this analysis in its ITA or its New Source Plan Review for the proposed power plant, based on the state's claim that no such cumulative analysis was required. Because UDAQ failed to require the Sevier Power Company to comply with state regulation requiring a cumulative Class I increment, the relevant AO should be declared illegal, should be rescinded, and/or should be remanded to the agency for proper Class I increment analysis.

9. The Proposed Facility Will Contribute to Class I SO_2 Increment Violations at Capitol Reef National Park.

UDAQ violated Utah regulations in issuing the AO because, as currently permitted, the Sevier Power Company plant will contribute to violations of the Class I SO_2 increment (otherwise known as "maximum allowable increase") in Capitol Reef National Park. Although the company submitted a **cumulative** Class I SO_2 increment analysis with its September 10, 2003 PSD permit application and NOI that did not indicate any Class I increment violations, its cumulative analysis was flawed and incomplete. Most significantly, the Sevier Power Company failed to model existing sources at their maximum actual 3-hour average and 24-hour average SO_2 emission rates. This approach is not consistent with the Guidelines on Air Quality Models, incorporated by reference into Utah regulations at Utah Admin. Code R307-410-2 and fails to protect sufficiently Class I airsheds including Capitol Reef National Park. The Sevier Power Company also failed to include all increment consuming emissions in its analysis, including the emissions of other proposed new facilities such as the proposed Unit #3 of the Intermountain Power Plant.

The National Park Service, in the context of reviewing the Notice of Intent to Construct for Unit #3 at the Intermountain Power Plant, conducted a more accurate Class I SO_2 increment analysis that shows that **existing** sources in Utah are causing violations of the 3-hour average Class I increment in Capitol Reef National Park. The Park Service presented this analysis to UDAQ electronically before or in November of 2003. On March 25, 2004, the National Park Service submitted a letter to UDAQ that provided, among other things, the Park Service's formal findings that the three-hour average SO_2 increment was being violated by existing sources in Utah at Capitol Reef National Park.

Sevier Power Company's modeling analysis showed that the proposed facility would affect 3-hour average SO_2 concentrations at Capitol Reef National Park. *See* Table 7-8 of Sevier Power Company's PSD Permit Application (September 10, 2003). Because the facility would contribute to the increment violations at Capitol Reef National Park (shown by the National Park Service's modeling analysis), UDAQ is prohibited from issuing the AO. *See* Utah Admin. Code R307-401-6(2), R307-405-6(2)(a)(i)(A) and R307-405-6(2)(c).

As discussed above, state or federal law does not support the use of SILs to find that Sevier Power Company would not contribute to the increment violation at Capitol Reef National Park. Further, EPA policy states that, in an area with an existing increment violation, **any** impact is significant. *E.g., see* April 12, 2002 letter to Terry O'Clair, North Dakota Department of Health, from Richard R. Long, EPA Region VIII. In addition, EPA's longstanding interpretation of the statutory and regulatory provisions for the PSD increments clearly mandate that, in an area with existing PSD increment violations, the violations "must be entirely corrected before PSD sources which affect the area can be approved." 45 Fed.Reg. 52678 (August 7, 1980).

Thus, because the proposed facility will contribute to violations of the Class I SO_2 increment in Capitol Reef National Park, the relevant AO should be declared illegal, should be rescinded, and/or should be remanded to the agency for proper analysis of SO_2 increment violations and for compliance with emission offset requirements.

10. The Approval Order for the Proposed Plant is Now Invalid Because Construction Did Not Commence Within 18 Months of the Approval Order, the Approval Order Automatically Expired After 18 Months Passed Without Approval of an Extension, and the UDAQ's Purported Approval of the Extension in June 2007 is Illegal.

The Executive Secretary signed the Approval Order for the proposed plant on October 12, 2004. The Utah PSD regulations provide, under "Source Obligations," that "the provisions of 40 C.F.R. 52.21(r), effective March 3, 2003, are hereby incorporated by reference." R307-405-19(1). That federal regulation, in turn, provides that:

> Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified.
>
> 40 C.F.R. 52.21(r)(2).

The AO is also subject to this federal regulation, which has been in effect since at least 1975, by the terms of the AO itself. The AO expressly provides that "[t]his AO in no way releases the owner or operator from any liability for compliance with all other applicable federal, state, and local regulations including R307." AO at 12.

SPC requested an extension of time in a letter dated November 17, 2005. Contrary to its procedure in the matter of the Approval Order for Unit 3 of the Intermountain Power Project, No. DAQE-AN0327010-04, UDAQ did not respond to this letter. Although UDAQ has contended in depositions and in a letter from the Executive Secretary dated June 6, 2007 that UDAQ reviewed the AO at the 18-month period and

approved an extension, there is no documentation of this review, nor of the date UDAQ approved the extension. Because UDAQ has not shown that the approval of the extension occurred before the 18-month period elapsed, the SPC AO expired automatically under the applicable regulation on or about April 12, 2006. Accordingly, Sevier Power Company must submit a new NOI to DAQ and re-initiate the AO process for approval to construct the proposed plant.

In addition, the terms of the AO itself provide that "[i]f construction and/or installation has not been completed within eighteen months from the date of this AO, the Executive Secretary shall be notified in writing on the status of the construction and/or installation. At that time, the Executive Secretary shall require documentation of the continuous construction and/or installation of the operation and may revoke the AO in accordance with R307-401-11." AO at 5. R307-401-11, now renumbered as R307-401-18, provides that

> Approval orders issued by the executive secretary in accordance with the provisions of R307-401 shall be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

According to the Executive Secretary's June 6, 2007 letter, UDAQ conducted an 18-month review in response to SPC's request for an extension, at some time after November 17, 2005. This review included an analysis of what Best Available Control Technology was for SPC, and whether it had changed since the AO. However, no contemporary documentation of this review exists, nor is there any documentation supporting the conclusion in the review regarding the BACT analysis at the time of the 18-month review. The formal decision to approve the extension did not occur until June 6, 2007 when the decision was formalized in the Executive Secretary's letter of that date. That decision also includes an open-ended extension of the AO, and neither SPC nor UDAQ have established a new projected start-up date for the SPC plant.

In addition, the Utah air quality regulations provide that

> Every new major source or major modification must be reviewed by the Executive Secretary to determine the air quality impact of the source to include a determination whether the source will cause or contribute to a violation of the maximum allowable increases or the NAAQS in any area. <u>The determination of air quality impact will be made as of the source's projected start-up date</u>. Such determination <u>shall take into account all allowable emissions of approved sources or modifications whether constructed or not</u>, and, to the extent practicable, the cumulative effect on air quality of all sources and growth in the affected area.

R307-405-6(2) (emphasis added). The Executive Secretary's decision to allow an open-ended extension of the start up date for the SPC plant, without establishing a new

projected start-up date and without conducting new modeling and making a new determination of the air quality impact as of the new project start-up date, directly conflicts with UDAQ's obligation under this rule. The decision to extend the AO, without projecting and analyzing the air quality impact as of a new projected start up date also failed to take into account all approved sources or modifications and the cumulative effects on air quality as of that new projected start up date. The failure to update the required modeling and determination of air quality impacts was unlawful under this regulation.

Because there was no substantial evidence to support the conclusion that the terms and conditions of the AO should remain the same despite the passage of 18 months without commencing construction, and another 14 months thereafter until the Executive Secretary's formal approval of an extension, the Executive Secretary's decision to approve the extension, not revoke the AO, and not alter the terms of the AO was arbitrary and capricious. The Executive Secretary's decision to approve the postponement of the start up date for SPC, without preparing new modeling and analysis of air quality impacts to account for the later start up date, including approved sources and cumulative impacts as of that new projected start up date, violated the express provision of R307-405-6(2). The process followed to make the decision and formalize it on June 6, 2007 was unlawful and inconsistent with the agency's practice in approving the extension for Unit 3 of the Intermountain Power Project, and was conducted without providing the public with notice of the 18-month review and proposed extension or an opportunity to comment on those agency actions. The inadequacy of UDAQ's 18-month review, coupled with the automatic expiration of the approval to construct under R307-405-19(1) and corresponding source obligations in the federal regulations, require that Sevier Power Company now submit a new NOI to DAQ to obtain approval to construct the proposed plant.

D. Request For Relief

Based on the above, the Sierra Club respectfully requests that the Air Quality Board declare the AO for the proposed Sevier Power Company facility illegal, revoke the AO for the plant, and/or remand the AO to UDAQ with instructions that the agency comply with the law and undertake or require the proper analysis as part of the permit and permitting process.

Dated: July 17, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 2007, I caused a copy of the foregoing Second Amended Request for Agency Action to be emailed to the following:

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